

FCC MAIL SECTION

Federal Communications Commission

DA 98-777

APR 27 1 29 AM '98

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ashdown and DeQueen, Arkansas)

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MM Docket No. 97-223
RM-9014

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 15, 1998

Released: April 24, 1998

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 17388 (1997), issued in response to a petition for rule making filed on behalf of Bunyard Partnership, licensee of Station KARQ(FM), Channel 221A, Ashdown, Arkansas, and Jay W. Bunyard and Anne W. Bunyard, licensee of Station KDQN-FM, Channel 226C2, DeQueen, Arkansas ("petitioner"),¹ proposing the substitution of Channel 227C3 for Channel 221A at Ashdown and modification of the license for Station KARQ(FM), as requested. Additionally, to accommodate the proposed modification of Station KARQ(FM), petitioner also proposed the substitution of Channel 221C2 for Channel 226C2 at DeQueen, Arkansas, and modification of the license of Station KDQN-FM accordingly. Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. As indicated in the *Notice*, the proposed channel swap with Station KDQN-FM at DeQueen is required to accommodate the proposed modification of Station KARQ(FM) at Ashdown. As no other alternate channels are available at either location, the proposed channel substitutions create a mutually exclusive relationship as contemplated by Section 1.420(g)(3) of the Commission's Rules, and therefore the proposal is exempt from the consideration of competing expressions of interest. *See Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels* ("Modification"), 60 RR 2d 114,120 (1986).²

¹Jay W. Bunyard and Anne W. Bunyard are principals in Bunyard Partnership.

²Section 1.420(g)(3) permits the modification of a station's authorization to a higher class channel if the channel is a co-channel or mutually-exclusive adjacent channel. Moreover, the Commission will consider analogous proposals involving channel substitutions at other communities which would be necessary to create a mutually exclusive relationship required pursuant to Section 1.420(g)(3), and has determined to consider these "incompatible channel swaps" on a case-by-case basis.

3. The *Notice* announced that the 1.0 mV/m contour of proposed Channel 221C2 at DeQueen lies within the Grade B (47 dBu) contour of Station KTAL-TV, Channel 6, Texarkana, Texas. In recognition of the Commission's concern that higher powered operation on Channel 221 not affect adversely the continued availability of noncommercial educational FM ("NCE-FM") service in TV Channel 6 markets, petitioner provided some initial information to demonstrate the preclusive impact of a Channel 221C2 allotment at DeQueen on the future availability of new noncommercial service on some classes of channels on 218, 219 and 220. However, in accordance with the *First Report and Order* in MM Docket No. 86-144, 52 FR 8259, March 17, 1987, petitioner was requested to supplement the studies to reflect such impact on all classes of channels (i.e., Class A, C3, C2, C1 and C) within the affected area.

4. In response to the *Notice*, petitioner provided an additional preclusion study to demonstrate that new noncommercial service on Channels 218, 219 and 220 on all classes of channels to communities with populations of at least 1,000 persons would not be significantly affected as a result of the proposed allotment of Channel 221C2 at DeQueen, Arkansas.³ Petitioner reiterates that the proposed substitution at Ashdown will enable Station KARQ(FM) to increase the population it serves to encompass 124,736 persons (+110,214) in an area of 4,791.1 square kilometers (+3,107.0). On the basis of the information provided, petitioner urges that there are no negative factors to be weighed as the result of precluded noncommercial allotments to communities *vis-a-vis* the public interest benefits to be gained by their proposal.

5. A staff engineering analysis reveals that the communities of Commerce, Cooper, Bonham and Honey Grove, Texas, each of which contains a population of at least 1,000 persons, are located within a geographical area constituting a new area of preclusion. The proposed allotment of Channel 221C2 at DeQueen would preclude this area as a potential site location, in addition to areas already precluded by existing stations operating on Channel 220C and 220C1.⁴ However, as discussed *infra*, those four communities would not be denied NCE-FM reception service as they either already receive or could receive such service on other reserved channels.

6. Our analysis also confirms the petitioner's study demonstrating that no additional preclusion would exist for Channels 220A, C2 and C3 as well as for Channels 219 and 218 for all classes. For the communities of Commerce, Cooper, Bonham and Honey Grove, Texas, we have determined that, based on the assumption that each NCE-FM channel would operate at maximum Class C power levels, the availability of certain channels below Channel 218 are

³Petitioner's technical engineering exhibit notes that any preclusionary impact within the affected areas could be eliminated by the imposition of site restrictions or the availability of alternate channels.

⁴There are no classes for the NCE-FM reserved Channels 201-220. The Commission appends class designations to reserved channel numbers for convenience, as if the channels were commercial channels of equivalent facilities. For each reserved channel considered in a preclusion study, maximum facilities are assumed as called for by the class designation.

presently precluded by Station KTAL-TV, Channel 6, Texarkana, Texas. They are as follows: Commerce, Channels 201-214; Cooper, Channels 201-217, Bonham, Channels 201-205; Honey Grove, Channels 201-213.⁵ On the other hand, in those communities the channels not precluded by Station KTAL-TV would be available for NCE-FM use in addition to Channels 218 and 219 of any class and Channel 220A, 220C2 and 220C3.

7. Based on the above findings, we believe the public interest will be served by a grant of the instant proposal since it could enable Station KARQ(FM) to provide an expanded coverage area FM broadcast service. Therefore, we will substitute Channel 227C3 for Channel 221A at Ashdown, Arkansas, and modify the license for Station KARQ(FM) to specify operation on the higher class channel. In order to accommodate the allotment of Channel 227C3 at Ashdown we will also substitute Channel 221C2 for Channel 226C2 at DeQueen, Arkansas, and modify the license for Station KDQN(FM) as requested.

8. As stated in the *Notice*, Channel 227C3 can be substituted for Channel 221A at Ashdown, Arkansas, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site located 5.0 kilometers west of the community at coordinates 33-40-22 and 94-11-02. Channel 221C2 can be substituted for Channel 226C2 at DeQueen, Arkansas, at the presently authorized site for Station KDQN-FM at coordinates 34-13-35 and 94-17-35.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 8, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with regard to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Ashdown, Arkansas	227C3, 280A
DeQueen, Arkansas	221C2

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Bunyard Partnership for Station KARQ(FM), Ashdown, Arkansas, IS MODIFIED to specify operation on Channel 227C3 in lieu of Channel 221A, subject to the following conditions:

⁵It should be noted however, that the number of NCE-FM channels that would be precluded by TV Channel 6 or by other FM stations would decrease as the NCE-FM station's operating power falls below a Class C maximum level.

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Jay W. Bunyard and Anne W. Bunyard, licensee of Station KDQN-FM, DeQueen, Arkansas, IS MODIFIED to specify operation on Channel 221C2 in lieu of Channel 226C2, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KDQN-FM's license (File No. BLH-961017KA) except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (File No. BLH-961017KA), except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Bunyard Partnership, licensee of Station KARQ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade at Ashdown, Arkansas.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**